

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Improving Public Safety Communications)	
in the 800 MHz Band)	WT Docket No. 02-55
and)	DA 02-2202
Consolidating the 900 MHz Industrial/Land)	
Transportation and Business Pool Channels)	

To: The Commission

**COMMENTS OF CREATIVE AIRTIME SERVICES, LLC,
FISHER WIRELESS SERVICES, INC., FLEETTALK PARTNERS, LTD,
INDUSTRIAL WIRELESS TECHNOLOGIES, INC. AND RADIO ONE, INC.**

Creative Airtime Services, LLC, Fisher Wireless Services, Inc., FleetTalk Partners, Ltd, Industrial Wireless Technologies, Inc. and Radio One, Inc. (collectively “Joint Commenters”) respectfully submit the following Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) September 6, 2002 Public Notice¹ inviting comment on the so-called “Consensus Plan” filed as Reply Comments in the above-entitled proceeding.² For the reasons described below, the Joint Commenters urge the Commission to expand the scope of this further inquiry to include all substantive proposals received during the reply comment cycle of this proceeding, including, but not limited to, the Consensus Plan. In particular, the Commission should seek specific comment on the Reply Comment proposal submitted by Motorola, Inc., an entity

¹*Public Notice*, Wireless Telecommunications Bureau Seeks Comment on “Consensus Plan” Filed in the 800 MHz Public Safety Interference Proceeding, DA 02-2202 (rel. September 6, 2002) (“Public Notice”).

²*Notice of Proposed Rule Making*, WT Docket No. 02-55, FCC 02-81 (rel. March 15 2002) (“Notice”).

whose long-standing involvement in all aspects of the wireless industry offers unique insight into the issues under consideration in this proceeding.

I. INTRODUCTION

Each of the Joint Commenters operates 800 MHz and/or 900 MHz commercial systems authorized under Part 90 of the Commission's Rules,³ which operations will be impacted directly by the FCC's decision in the instant proceeding. Moreover, the Joint Commenters are two-way radio dealers providing radio equipment sales, as well as system design, integration, construction and maintenance, to a number of large and small customers, including those currently operating on the 800 MHz spectrum at issue herein. Because their own and their customers' operations may be significantly impacted by whatever rules the FCC adopts, the Joint Commenters consider it imperative that the Commission invite full consideration of all credible proposals for addressing these matters, including those submitted as Reply Comments. Doing so will ensure that whatever decision the Commission adopts is based on a record that is complete, convincing and capable of withstanding potential judicial scrutiny.

II. THE FCC SHOULD ISSUE AN ERRATUM OR TAKE OTHER APPROPRIATE ACTION SETTING A NEW DATE FOR COMMENTS ON THE CONSENSUS PLAN, THE MOTOROLA PROPOSAL AND ALL OTHER CREDIBLE INTERFERENCE SOLUTIONS SUBMITTED AS REPLY COMMENTS.

In the instant proceeding, the Commission has solicited potential solutions to increasing levels of interference to 800 MHz public safety systems from Commercial Mobile Radio Systems ("CMRS") operating in the same or in adjacent bands and deployed in cellular-like system configurations. The Notice outlined the 800 MHz rebanding proposals submitted by Nextel Communications, Inc. ("Nextel") and by the National Association of Manufacturers (NAM and

³47 C.F.R. § 90.1 *et seq.*

MRFAC, Inc. (“NAM/MRFAC”) in a joint filing, as well as a rebanding plan suggested by the Commission itself.

A significant number of parties filed Comments and Reply Comments in response to the Notice. Collectively, those pleadings represent the interests of the public safety community, cellularized CMRS operators such as Nextel and a variety of cellular and PCS licensees, all categories of 800 MHz incumbents, and entities with an interest in the various bands above 1 GHz suggested either by Nextel or by the FCC as potential replacement spectrum should Nextel lose capacity as a result of an 800 MHz rebanding solution. Not surprisingly, given the disparate interests of the parties involved and the very substantial economic ramifications of whatever decision the FCC adopts, there are sharp differences in the recommended approaches to the interference problem.

The Commission’s already formidable task of identifying the optimal solution was made even more difficult because some rebanding proposals were not fully formulated until the Reply Comment stage. It is not surprising that certain recommendations took considerable time to develop, particularly those such as the Consensus Plan and the proposal outlined by Motorola that focused on the complex balancing of public safety, private land mobile radio (“PLMR”) and CMRS use of the 800 MHz and adjacent bands. The Joint Commenters applaud these dedicated efforts and believe they deserve thoughtful consideration by the FCC and all other interested parties.

The Joint Commenters find it surprising, therefore, that the Commission has elected to solicit further comment only on the Consensus Plan. That Plan has much to recommend it including the endorsement of Nextel, public safety representatives and representatives of PLMR interests. However, in light of Motorola’s recognized technical expertise as well as its multi-decade role as

a pre-eminent equipment supplier to the public safety, PLMR and CMRS industries, its proposal surely warrants careful evaluation as well.

The FCC may have expected those responding to the Public Notice to comment on all proposals submitted at the Reply Comment stage, not just the Consensus Plan.⁴ However, by identifying only the Consensus Plan in its Public Notice, the Commission may have foreclosed the opportunity to develop the full and complete record its analysis requires. Its invitation may be perceived inadvertently as an indication that the Consensus Plan warrants further consideration while other plans, such as Motorola's, do not. Because the Joint Commenters are confident that the Commission has made no such determination at this stage of the proceeding and that its failure to request comment on Motorola's Reply Comments (as well as any other substantive proposals submitted on reply) was an oversight, it urges the FCC to correct this matter.

The Joint Commenters recognize that the Commission typically accords parties in a rule making proceeding broad latitude in the scope of their comments. They assume the agency will consider all submissions received in response to the Public Notice whether confined to the Consensus Plan or not. Nonetheless, the Joint Commenters urge the FCC to issue an Erratum or otherwise clarify its intentions regarding this matter immediately and publicly. The FCC's decision in this proceeding will have a profound financial and operational impact on a significant number of licensees, most assuredly some in the 800 MHz band and perhaps those in other bands as well. Those licensee dislocations may be necessary to satisfy broader Commission policy objectives. However, it would be regrettable if the FCC settled on a migration path that could be undone by a

⁴The Joint Commenters are unaware of proposed solutions other than the Consensus Plan and Motorola's recommendation that were not submitted until the Reply Comment cycle. If other credible approaches were filed at that stage, they should be included in an FCC request for further comment as well.

challenge, not to the determination itself, but to the process by which that decision was reached. For those whose businesses will be significantly affected by the outcome of this proceeding, a brief delay at this stage to solidify the record is vastly preferable to the uncertainty and very substantial delay that could ensue from a subsequent procedural challenge.

III. CONCLUSION

For the reasons described herein, the Joint Commenters respectfully request that the Commission issue an Erratum or otherwise publicly correct the Public Notice and set a new date on which the FCC will accept comments on the Consensus Plan, the proposal described in Motorola's Reply Comments and any other credible interference solution submitted at the Reply Comment stage.

Respectfully submitted,

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**INDUSTRIAL WIRELESS TECHNOLOGIES,
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By: /s/
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Dated: September 16, 2002